

On behalf of the petitioner it is contended that the presumption as urged against him, is deduced from the state of facts ordinarily existing between individuals, enjoying the common facilities of intercourse, where the creditor is in a condition to demand the payment of his claim, and the debtor is liable to legal coercion

112 for *the purpose of satisfying that demand. It is a presumption that the debt has been paid, arising from the failure to take any steps to obtain the payment. The rule which establishes the presumption, therefore, assumes the fact, that such a state of things existed as would have enabled the creditor to make these efforts, and might have rendered them available to him.

Upon these general principles the petitioner endeavors to shelter himself from the force of the presumption by shewing, that his predecessor, on whom the duty to collect this debt had devolved, was, by the Revolutionary struggle of our country, thrown into the midst of a new and extraordinary state of things; that his debtors were cast out as alien enemies, and their property confiscated, or so situated, or so disposed of, that he knew not where to find it, or how to make it available toward the satisfaction of his claim.

The presumption of satisfaction arising from lapse of time, relied on as a defence against this claim, is a deduction from two facts which it assumes to be true; first, that the creditor always had an efficient remedy for the recovery of his debt; and secondly, that there always was property of the debtor, known to the creditor, within reach of his remedy, fully sufficient for the satisfaction of his claim. *Hillary v. Waller*, 12 Ves. 266; *Fladong v. Winter*, 19 Ves. 196; *The Mayor of Hull v. Horner*, Cowp. 109. If these facts are shewn to be true the presumption of satisfaction follows as an irresistible deduction from them; because, it cannot be believed, that a creditor who had the power and the means of obtaining satisfaction would so long neglect the recovery of his right.

This creditor complains, that his remedies have been impaired or destroyed by the law of confiscation and forfeiture which were enforced by the State against his debtor; by the war, during which his debtors were alien enemies; and by his debtors being foreigners resident abroad. And in the next place, even supposing his remedies to have been in their nature efficient, and in no way impaired, that he knew of no debts or property of his debtor which could have been brought within reach of those remedies. These are the positions to be examined; and the examination of them will necessarily exhibit the bearing which the positive Statute of Limitations has upon this case.

By the law of England, a person convicted of treason or felony forfeited his estate; and all his property, including debts due to **113** *him, were confiscated and carried into the public treasury. And in like manner when any one died intestate without heirs or next of kin capable of taking after him, his real and per-